

AMENDED IN SENATE MARCH 29, 2005

SENATE BILL

No. 943

Introduced by Senator Torlakson

February 22, 2005

An act to amend Section 1103.4 of the Civil Code, ~~and to amend Section 12404 of the Insurance Code~~, relating to real property.

LEGISLATIVE COUNSEL'S DIGEST

SB 943, as amended, Torlakson. Real property: ~~title insurance~~: real estate agents.

Existing law provides that neither a transferor nor any listing or selling agent shall be liable for any error, inaccuracy, or omission of any information delivered relating to the sale of real property if the error, inaccuracy, or omission was not within the personal knowledge of the transferor or the listing or selling agent, and was based on information timely provided by public agencies or by specified experts, and ordinary care was exercised in obtaining and transmitting the information. Existing law requires an expert requested to deliver a report or opinion on the real property to determine if the property is within specified areas.

This bill would require such an expert to determine whether the property is located within a one-half mile radius of specified environmental hazard sites.

~~Existing law generally regulates title insurance. Existing law prohibits any title insurer, underwritten title company or controlled escrow company from paying, directly or indirectly, any commission, compensation, or other consideration to any person as an inducement for the placement or referral of title business, and specifies actions that violate this prohibition.~~

~~This bill would add providing or offering to provide natural hazard disclosure reports, home warranties, or other reports or services that~~

~~are unrelated to title insurance to the actions that violate this prohibition.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1103.4 of the Civil Code is amended to
2 read:

3 1103.4. (a) Neither the transferor nor any listing or selling
4 agent shall be liable for any error, inaccuracy, or omission of any
5 information delivered pursuant to this article if the error,
6 inaccuracy, or omission was not within the personal knowledge
7 of the transferor or the listing or selling agent, and was based on
8 information timely provided by public agencies or by other
9 persons providing information as specified in subdivision (c) that
10 is required to be disclosed pursuant to this article, and ordinary
11 care was exercised in obtaining and transmitting the information.

12 (b) The delivery of any information required to be disclosed
13 by this article to a prospective transferee by a public agency or
14 other person providing information required to be disclosed
15 pursuant to this article shall be deemed to comply with the
16 requirements of this article and shall relieve the transferor or any
17 listing or selling agent of any further duty under this article with
18 respect to that item of information.

19 (c) The delivery of a report or opinion prepared by a licensed
20 engineer, land surveyor, geologist, or expert in natural hazard
21 discovery dealing with matters within the scope of the
22 professional's license or expertise, shall be sufficient compliance
23 for application of the exemption provided by subdivision (a) if
24 the information is provided to the prospective transferee pursuant
25 to a request therefor, whether written or oral. In responding to
26 that request, an expert may indicate, in writing, an understanding
27 that the information provided will be used in fulfilling the
28 requirements of Section 1103.2 and, if so, shall indicate the
29 required disclosures, or parts thereof, to which the information
30 being furnished is applicable. Where that statement is furnished,
31 the expert shall not be responsible for any items of information,
32 or parts thereof, other than those expressly set forth in the
33 statement.

(1) In responding to the request, the expert shall determine whether the property is within an airport influence area as defined in subdivision (b) of Section 11010 of the Business and Professions Code. If the property is within an airport influence area, the report shall contain the following statement:

NOTICE OF AIRPORT IN VICINITY

This property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you.

(2) In responding to the request, the expert shall determine whether the property is within the jurisdiction of the San Francisco Bay Conservation and Development Commission, as defined in Section 66620 of the Government Code. If the property is within the commission's jurisdiction, the report shall contain the following notice:

NOTICE OF SAN FRANCISCO BAY CONSERVATION
AND DEVELOPMENT COMMISSION JURISDICTION

This property is located within the jurisdiction of the San Francisco Bay Conservation and Development Commission. Use and development of property within the commission's jurisdiction may be subject to special regulations, restrictions, and permit requirements. You may wish to investigate and determine whether they are acceptable to you and your intended use of the property before you complete your transaction.

(3) In responding to the request, the expert shall determine whether the property is located within a one-half mile radius of any one of the following environmental hazard sites:

(A) A National Priority List site, as listed on the database of the Environmental Protection Agency.

1 (B) A Comprehensive Environmental Response,
2 Compensation and Liability Act (CERCLA) site, as listed on the
3 database of the Environmental Protection Agency.

4 (C) A Solid Waste Land Fill or Solid Waste Information
5 System site, as listed on the database of the Integrated Waste
6 Management Board.

7 (D) A Leaking Underground Storage Tank site, as listed on the
8 database of the California Water Resources Control Board.

9 (E) A Spills, Leaks, Investigations, and Cleanup site, as listed
10 on the database of the California Water Resources Control
11 Board.

12 (F) A Resource Conservation Recovery Act site, as listed on
13 the database of the Environmental Protection Agency.

14 (4) If the property is within a one-half mile radius of any of
15 the sites listed in paragraph (3), the report shall contain the
16 following notice:

17 “NOTICE OF ENVIRONMENTAL HAZARD SITE

18 This property is presently located within a one-half mile radius of
19 an environmental hazard site. For that reason, you may wish to
20 investigate the information about the site further by contacting
21 the agency responsible for the maintenance and cleanup of this
22 site, consider what factors, if any, are associated with the
23 property’s proximity to an environmental hazard site, and
24 determine whether the information you receive is acceptable to
25 you before you purchase.”

26 ~~SEC. 2. Section 12404 of the Insurance Code is amended to~~
27 ~~read:~~

28 ~~12404. (a) It is unlawful for any title insurer, underwritten~~
29 ~~title company or controlled escrow company to pay, directly or~~
30 ~~indirectly, any commission, compensation, or other consideration~~
31 ~~to any person as an inducement for the placement or referral of~~
32 ~~title business. Actual placement or referral of title business is not~~
33 ~~a precondition to a violation of this section, whether the violation~~
34 ~~is or is not a per se violation pursuant to subdivision (c).~~

35 ~~(b) For purposes of this section, the following definitions are~~
36 ~~applicable:~~

37 ~~(1) “Person” means any individual or entity who is any owner~~
38 ~~or prospective owner, lessee or prospective lessee of real~~
39 ~~property or any interest therein, any obligee or prospective~~
40 ~~obligee of an obligation secured or to be secured either in whole~~

1 or in part by real property or any interest therein, or any person
2 who is acting or who is in the business of acting as agent,
3 representative, attorney, or employee of those persons.

4 (2) “Title business” means the “business of title insurance” as
5 defined in Section 12340.3, and includes, but is not limited to,
6 the offering of title insurance, escrow, or other services by a title
7 insurer, underwritten title company, or controlled escrow
8 company.

9 (3) “Compensating balance” is a balance maintained in a
10 lending institution by any title insurer, underwritten title
11 company, or controlled escrow company for the express or
12 implied purpose of influencing the extension of credit to a third
13 party or the provision of goods, services or benefits to a third
14 party as an inducement for the placement or referral of title
15 business by a third party.

16 (e) The following activities, whether performed directly or
17 indirectly, are deemed per se inducements for the placement or
18 referral of title insurance business by any person and are
19 unlawful:

20 (1) Paying or offering to pay, furnishing or offering to furnish,
21 or providing or offering to provide assistance with the business
22 expenses of any person, including, but not limited to, rent,
23 employee salaries, furniture, copiers, facsimile machines,
24 automobiles, telephone services or equipment, or computers.

25 (2) Providing or offering to provide any form of consideration
26 intended for the benefit of any person, including cash, below
27 market rate loans, automobile charges, or merchandise or
28 merchandise credits.

29 (3) Placing or offering to place on behalf of any person,
30 compensating balances.

31 (4) Advancing or paying or offering to advance or pay money
32 on behalf of any person into an escrow to facilitate the closing
33 thereof, other than any sum which represents the proceeds of a
34 loan made in the ordinary course of business and in compliance
35 with Section 1176; or an advance not to exceed 2 percent of the
36 sales price of the real property being sold or exchanged through
37 the escrow or the amount of any loan secured by real property
38 involved in the escrow, whichever is greater; or the extension of
39 credit or an advance for the costs, fees and expenses of the

1 ~~escrow or of the title insurance issued or to be issued in~~
2 ~~connection therewith.~~

3 ~~(5) Disbursing or offering to disburse on behalf of any person~~
4 ~~escrow funds held by a title insurer, underwritten title company~~
5 ~~or controlled escrow company before the conditions of the~~
6 ~~escrow applicable to that disbursement have been met, or in a~~
7 ~~manner which does not conform to Section 12413.1, including~~
8 ~~disbursing or offering to disburse before the expiration of the~~
9 ~~appropriate period established in Section 12413.1.~~

10 ~~(6) Furnishing or offering to furnish all or any part of the time~~
11 ~~or productive effort of any employee of the title insurer,~~
12 ~~underwritten title company, or controlled escrow company to any~~
13 ~~person for any service unrelated to the title business.~~

14 ~~(7) Providing or offering to provide natural hazard disclosure~~
15 ~~reports, home warranties, or other reports or services that are~~
16 ~~unrelated to title insurance.~~

17 ~~(d) Reasonable expenditures for food, beverages,~~
18 ~~entertainment, educational programs, and promotional items~~
19 ~~constituting ordinary business expenses are deemed not to~~
20 ~~constitute an inducement for the placement or referral of title~~
21 ~~business, if the expenditures are correctly reported and properly~~
22 ~~substantiated as an ordinary and necessary business expense~~
23 ~~under provisions of the Internal Revenue Code and regulations~~
24 ~~issued thereunder, and the expenditures do not violate any other~~
25 ~~section of law, including, but not limited to, Section 10177.4 of~~
26 ~~the Business and Professions Code.~~

27 ~~(e) The provision or payment of any form of consideration as~~
28 ~~an inducement for the placement or referral of title business not~~
29 ~~specifically set forth in this section shall not be presumed lawful~~
30 ~~merely because they are not specifically prohibited.~~

31 ~~(f) The Insurance Commissioner may determine compliance~~
32 ~~and enforce the provisions of this section by written order,~~
33 ~~regulation or written consent which may take into consideration~~
34 ~~standards, conditions, guidelines, principles, or definitions~~
35 ~~utilized by other states or federal agencies but those standards,~~
36 ~~conditions, guidelines, principles, or definitions shall not be~~
37 ~~determinative.~~

38 ~~(g) It is the intent of the Legislature that the enactment of this~~
39 ~~section shall have no effect on the applicability of other sections~~
40 ~~of the Insurance Code that are in existence prior to the enactment~~

1 of this section and which specifically, or by implication, refer to
2 this section. The Legislature hereby intends that this section,
3 including the specific terms employed within it, shall be liberally
4 construed for the purpose of protecting consumers of title
5 business.

O